

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MELANIE H. CASTANEDA,

Plaintiff,

v.

HARRIS & HARRIS, LTD.,

Defendant.

COMPLAINT

CASE NO. 1:21-cv-03138

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes MELANIE H. CASTANEDA (“Plaintiff”), by and through her undersigned attorneys, complaining as to the conduct of HARRIS & HARRIS, LTD. (“Defendant”) as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. § 1692 *et seq.* and pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. § 227 *et seq.* for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C § 1692, 28 U.S.C. §§ 1331 and 1337, as the action arises under the laws of the United States.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as Defendant conducts business in the Northern District of Illinois and a substantial portion of the events or omissions giving rise to the claims occurred within the Northern District of Illinois.

PARTIES

4. Plaintiff is a consumer over 18 years of age residing in Cook County, Illinois which lies within the Northern District of Illinois.

5. Defendant is a debt collection agency which promises its clients to “track[] accounts carefully, and collect[] diligently.”¹ Defendant has its principal place of business located at 111 W. Jackson Blvd, Suite 400, Chicago, IL 60604. Defendant regularly collects from consumers in the State of Illinois.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, third-party contractors, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

7. The instant action arises out of Defendant’s attempts to collect upon medical bills (“subject debt”) that Plaintiff allegedly owes to the Swedish Hospital.

8. Plaintiff purportedly incurred the subject debt for family medical services at the Swedish Hospital in Chicago.

9. Upon information and belief, following Plaintiff’s purported default the subject debt was turned over to Defendant for collections.

10. Around April 26, 2021, Defendant mailed or caused to be mailed a collection letter to Plaintiff in an attempt to collect upon the subject debt.

11. Defendant’s April 26th collection letter reflected an outstanding balance of \$250.00 for the subject debt.

12. Moreover, around late April 2021, Defendant began calling Plaintiff’s cellular number (773) XXX-9026 to collect upon the subject debt.

¹ <https://www.harriscollect.com/>

13. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in -9026. Plaintiff is and always has been financially responsible for the cellular phone and its services.

14. Defendant has primarily used the phone number (833) 914-0595 when placing calls to Plaintiff's cellular phone, but upon belief, Defendant has used other numbers as well.

15. Upon information and belief, the above aforementioned phone number ending in -0595 is regularly utilized by Defendant during its debt collection activity.

16. During this phone conversation in late April 2021, Plaintiff expressly revoked consent for Defendant to call her and requested that Defendant cease calling.

17. Despite Plaintiff's express demand, Defendant continued placing collection calls to Plaintiff's cellular phone.

18. When calling Plaintiff's cellular phone, Defendant used pre-recorded messages, which requested that Plaintiff return Defendant's calls.

19. Frustrated over Defendant's conduct, Plaintiff spoke with her attorneys regarding her rights, resulting in exhausting time and resources.

20. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

21. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to, invasion of privacy, aggravation that accompanies unconsented-to collection telephone calls, emotional distress stemming from the worry that Defendant would not cease calling irrespective of her demand.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

22. Plaintiff repeats and realleges paragraphs 1 through 21 as though fully set forth herein.

23. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) of the FDCPA.

24. Defendant is a “debt collector” as defined by § 1692a(6) of the FDCPA, because it regularly use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

25. Defendant identifies itself as a debt collector, and is engaged in the business of collecting or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed or due to others.

26. The subject debt is a “debt” as defined by FDCPA § 1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes.

a. Violations of FDCPA § 1692c(c) and § 1692d

27. The FDCPA, pursuant to 15 U.S.C. § 1692c(c), prohibits a debt collector from communicating with consumer once consumer demands it to cease communication. § 1692d further prohibits a debt collector from engaging “in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.”

28. Defendant violated § 1692c(c) and § 1692d when it again called Plaintiff after being notified to stop. This behavior of ignoring calling Plaintiff’s demands to cease communication carries with it the natural consequence of harassing and abusing Plaintiff.

29. Defendant was notified by Plaintiff that its calls were not welcomed. As such, Defendant knew that its conduct was inconvenient and harassing to Plaintiff.

b. Violations of FDCPA §1692e

30. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

31. In addition, this section enumerates specific violations, such as:

“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §1692e(10).

32. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject consumer debt. In spite of the fact that Plaintiff demanded that Defendant stop contacting her, Defendant continued to contact Plaintiff via automated calls. Instead of putting an end to this harassing behavior, Defendant systematically placed multiple phone calls to Plaintiff’s cellular phone in a deceptive attempt to force Plaintiff to answer its calls and ultimately make a payment. Through its conduct, Defendant misleadingly represented to Plaintiff that it had the legal ability to contact her when it no longer had consent to do so.

c. Violations of FDCPA § 1692f

33. The FDCPA, pursuant to 15 U.S.C. § 1692f, prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

34. Defendant violated § 1692f when it unfairly and unconscionably continued to contact Plaintiff in defiance of her express revocation of consent to be called.

35. As pled above, Plaintiff has been harmed and suffered damages as a result of Defendant’s illegal actions.

WHEREFORE, Plaintiff MELANIE H. CASTANEDA, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. § 1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. § 1692k(a)(1);

- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. § 1692k(a)(3);
- e. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject debt; and
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

- 36. Plaintiff repeats and realleges paragraphs 1 through 35 as though fully set forth herein.
- 37. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using a prerecorded or artificial voice messages, without their consent.
- 38. Defendant's use of prerecorded message in its contacts made towards Plaintiff is within the ambit of the TCPA.
- 39. The call placed by Defendant to Plaintiff was regarding business activity and was not for emergency purposes as defined by the TCPA under 47 U.S.C. § 227(b)(1)(A)(i).
- 40. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, MELANIE H. CASTANEDA, respectfully requests that this Honorable Court grant the following:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and

e. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: June 10, 2021

s/ Nathan C. Volheim

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Respectfully Submitted,

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